

The rule of law

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Palladium-Item photo by Steve Koger

Indiana Chief Justice Randall Shepard in his Chambers at the State House.

By Rebecca Helmes

Staff writer

In the three years that Darrin Dolehanty has been judge of Wayne Superior Court III, he has not missed a State of the Judiciary Address.

This week he reminisced about the packed Indiana House of Representatives chambers at the Statehouse in January when Chief Justice Randall Shepard spoke.

It's a rare occasion when leaders of the state's three branches of government meet in the same room. That address, like the State of the State by the governor or the State of the Union by the president, sets the agenda for the year.

"You talk about cool," Dolehanty said. "It's packed."

It's an address Shepard has delivered 18 times.

Calm and measured in speech and thought, he doesn't jump into the changes he makes on the state's highest court. But that doesn't mean he's shy about pursuing the changes he deems necessary.

Over the last 20 years, Shepard has molded the court slowly and steadily, introducing issues he believes it needs to try to change for the better. A history and preservation buff, he uses the state's past to help him figure out where it should go next.

His efforts have changed the way both the Supreme Court and courts around the state function.

Streamlining the docket

Changing how the Indiana Supreme Court's caseload is determined was an issue Shepard

took up immediately in his first-ever State of the Judiciary Address in 1988.

Recently in his office at the Indiana Statehouse, surrounded by the rich, deep red walls and the ceiling bordered with gold and dark blue, Shepard measured his words carefully while talking to a reporter.

He said that before reforms were instituted, about 90 percent of the cases coming before the court were from criminal dockets. Many of them made it to the docket because of a provision in the Indiana Constitution mandating the court hear cases where a sentence of greater than 10 years was imposed.

"Everything else got pushed

out," Shepard said, including things like custody cases, probate cases and other civil matters.

But while the court was under his guidance, voters passed not one but two statewide referenda changing that. Now, much of the criminal caseload has been reduced. The only criminal cases the Supreme Court is mandated to review are capital murder where defendants have been sentenced to die.

Because of that change, Shepard said the court's appellate role has changed dramatically. He and the four other Supreme Court justices meet once each week to review cases they will hear.

"We seem to take the cases that affect the most people," Shepard said.

Significant cases

The Indiana Supreme Court has a history of asserting its authority in the fight against slavery. Among its significant cases:

***State v. Lasselle* (1820):** This case was an appeal by a slave known only as Polly whose Virginia owner had been granted a writ of habeas corpus (a judicial mandate to bring an inmate to court to determine whether whether he or she has been lawfully imprisoned). The Supreme Court reversed the decision, stating: "the framers of our constitution intended a total and entire prohibition of slavery in this state; and we can conceive of no form of words in which that intention could have been more clearly expressed."

***Freeman v. Robinson* (1855):** The Supreme Court ruled that a slave has the right to sue the marshal in state court for assault, battery and extortion.

***Batchelor v. State* (1920):** The court established that a defendant has the right to counsel at pre-trial proceedings.



"You know you have a fighting shot of getting your case heard."

John Maley, an attorney who was raised in Richmond but now lives in Indianapolis, oversees more than 50 attorneys at the Indianapolis-based Barnes and Thornburg law firm and specializes in appellate law.

He said the Supreme Court has basically two functions: the administrative duties where it oversees lawyers and judges and the classic, traditional appellate work function.

"Most of those (appellate) cases involve constitutional questions," Maley said. "They (the Supreme Court justices) want to hear something that's going to impact people and businesses."

Regular people and courts

While most people never see the inside of the Indiana Supreme Court to hear cases being discussed, regular people are affected every day by the work the court tries to do to improve work at the county courthouses.

For instance, residents called to jury duty might notice some changes in the last year. Shepard encouraged changes not just in the selection of jurors, but also in the

About the Indiana Supreme Court

- Number of justices: five
- Yearly budget, FY 2005-2006: \$107,824,281
- The following are all connected with the Indiana Supreme Court but have individual budgets. The budgets are for FY 2005-2006: Court of Appeals, \$9,075,935; Clerk of the Supreme and Appellate Courts, \$938,015; Judicial Center, \$2,385,697; and Tax Court, \$614,451.
- The court is in session year-round.
- How does a justice become a justice?
The governor fills vacancies by appointment from three nominees submitted by a seven-member, non-partisan Judicial Nominating Commission. They serve a minimum of two years before they are subject to the yes-or-no retention at the next general election. Judges can be re-elected to 10-year terms, but they must retire at age 75.
- Connected to the Indiana Supreme Court:
Indiana Tax Court: Established by the Indiana General Assembly in 1986, covers cases arising under Indiana tax laws and initial appeals of decisions made by the Indiana Department of State Revenue or the Indiana Board of Tax Review.
Indiana Court of Appeals: Comprised of five districts with three judges each. This court has no original jurisdiction unless authorized by the Supreme Court. Has jurisdiction over all appeals the Supreme Court does not hear.
- Historical information about the Indiana Supreme Court:
Founded in 1816 when Indiana became a state.
The new Court sat first at Corydon on May 5, 1817, and consisted of three judges who the governor appointed for seven-year terms.
By two early decisions, it enforced the new Constitution's prohibition against slavery and involuntary servitude.
Governmental problems, including principally the bonded debt of Indiana, caused the calling of a Constitutional Convention in 1850. It was here that delegates reorganized the Indiana Supreme Court. Adopted in 1851, the judges were supposed to be elected by the people. They had six-year terms.
■ Shortly afterwards, the Indiana General Assembly decided that four judges should serve.

procedures of serving on a jury.

In his State of the Judiciary Address in January, Shepard said the Supreme Court was determined to put a "21st century bur-nish" on the right to a trial by jury.

The change he wanted: treat potential jurors better when they arrive, give them quality orientation for their task and give them better tools for their job.

The result: jurors are issued a notebook with which they can

take notes and they're allowed to ask questions during trials.

Taking notes or speaking up in the jury box was once forbidden in most courtrooms.

Judges also allow them to talk about the court proceedings before a trial decision has been reached. In previous years they were expressly admonished not to discuss the case until it ended.

"That's not the way adults make decisions," Shepard said. They can talk about the issues they want so long as they don't come to a conclusion before the trial is over.

The way jurors are selected has also changed in the last year.

While county clerks used to just use the voter rolls to select potential jurors, now clerks can use a combination of sources: voter rolls paired with names compiled from other sources like lists of utility companies, property taxpayers, people filing income tax returns, motor vehicle registrations, city directories, telephone directories and driver's licenses.

The Indiana General Assem-

bly approved that legislation and it took effect in 2003.

Helping others understand the courts

A third-place award in an international competition that ranked the best court Web sites put the Indiana Supreme Court in the position of being looked up to by other courts. More than 3,000 court Web sites were considered for the award.

The site offers laymen the opportunity to poke around and learn about things like the court's history, access its law library, oral arguments, information on how the court's run, citizen guides to the court, attorneys and judges, court documents for people to get their legal filings started online and much more.

"Courts are sort of mysterious places," Shepard said.

The aim is take some of that mystery out of the process by providing information to the public, encouraging awareness of the court and teaching people how government works.

"It's not a branch of government that people know much about," Dolehanty said.

Refocusing the big picture

Early in his position as chief justice, Shepard called upon Hoosier attorneys and judges to refocus their attention on relying upon and strengthening the Indiana Constitution.

One of Shepard's reasons for this, which he states in a 1989 ar-

ticle published in the Indiana Law Review, is because the Indiana Constitution provides a great variety of protections for citizens that are not enumerated in the federal Bill of Rights.

The U.S. Constitution is the highest law of the land, and the provisions of the Indiana Constitution cannot make contradictory regulations. But that doesn't mean Indiana law is the same as federal law.

"We have a federal system of government," Wayne Superior Court I Judge Tom Snow said. "The states all have their own constitutions as well."

Snow said the U.S. and Indiana Fourth Amendments — which protect citizens from unreasonable search and seizure — are basically the same, but Indiana judges can choose to interpret its Fourth Amendment more stringently than the federal amendment.

To explain how an Indiana interpretation of the Fourth Amendment may differ from a federal interpretation, Snow said the difference can be seen in something as simple as



Palladium-Item photo by Steve Koger

The Justice robes hang in the Supreme Court room in the Capitol.

putting the garbage out.

Snow said when a Hoosier takes his trash out to be picked up for disposal, he has essentially abandoned the contents of the trashcan.

Federal judges may interpret that since the trashcan was abandoned, anyone including police could search the trashcan and seize anything they want from it.

However, an Indiana court may decide that Indiana's Fourth Amendment can be interpreted in such a fashion that rummaging through someone's trash, even though they have abandoned it, infringes on their reasonable expectation of privacy. It is generally recognized as a standing right of state courts to exceed — but not to curtail — the rights guaranteed under the U.S. Constitution.

Snow said Shepard has tried to "breathe a little life" into the Indiana Constitution.

"Us Hoosiers, we have our own way of looking at things," Snow said.

Shepard's push for lawyers

and judges to work with the Indiana Code could be the product of a belief in a system of checks and balances. Just like the executive, legislative and judicial branches check one another's powers, so too do the federal and state courts.

To him, the purpose of refocusing on the Indiana Constitution means ensuring a governmental balance of power.

Shepard concluded the Indiana Law Review article with this:

"The protection of Americans against tyranny requires that state supreme courts and state constitutions be strong centers of authority on the rights of the people. I am determined that the Indiana Constitution and the Indiana Supreme Court be strong protectors of those rights."

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A look at the justices

Chief Justice Randall Shepard: Appointed by Gov. Robert Orr in 1985 at age 38; became chief justice two years later. Graduated

from Harvard University cum laude, Yale Law School and earned a Master of Laws degree in the judicial process from the University of Virginia. Judge of Vanderburgh Superior Court from 1980 until his appointment. Prior to being a judge he served as executive assistant to Mayor Russell Lloyd of Evansville and as special assistant to the Under Secretary of the U.S. Department of Transportation. In FY 2005-2006, Shepard is president of the National Conference of Chief Justices. He's the court's 99th justice.



■ **Randall Shepard**

Justice Brent E. Dickson: Appointed by Gov. Robert Orr in 1986. He earned his bachelor's degree from Purdue University and graduated

from Indiana University School of Law at Indianapolis. Prior to his appointment to the Supreme Court he spent 17 years as a general practice and trial lawyer in Lafayette. He was certified as a Civil Trial Advocate by the National Board of Trial Advocacy. He is the 101st justice.



■ **Brent E. Dickson**

Majority share
legal training
from Virginia

Justice Frank Sullivan Jr.: Appointed by then-Gov. Evan Bayh in 1993. Graduated cum laude from Dartmouth College,

magna cum laude from the Indiana University School of Law-Bloomington and from the University of Virginia School of Law with a Master in Laws. Served as an administrative assistant and staff director for former U.S. Representative John Brademas during the 1970s. He was appointed Indiana State Budget Director from 1989-1992. He's the 102nd justice.



■ **Frank Sullivan Jr.**

Justice Theodore R. Boehm: Appointed by Gov. Evan Bayh in 1996. He graduated summa cum laude from Brown University and graduated magna cum laude from Harvard Law School. While at Harvard he was an editor of the Harvard Law Review. He served as a law clerk to Chief Justice Earl Warren of the U.S. Supreme Court and later joined the Indianapolis law firm Baker and Daniels, where he was promoted to partner and then managing partner. His background has included corporate law.



■ **Theodore R. Boehm**

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■ **Brent E. Dickson**